

ENTERED

August 17, 2020

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EQUISTAR CHEMICALS L.P., §
§
Plaintiff, §
VS. § CIVIL ACTION NO. 4:18-CV-4349
§
INDECK POWER EQUIPMENT COMPANY, §
§
Defendant. §

AMENDED ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

The Court previously adopted Magistrate Judge Stacy's Memorandum and Recommendation (Doc. No. 44) addressing the parties' cross-motions for summary judgment (Doc. Nos. 23 and 25). (*See* Doc. No. 47). In relevant part, the Memorandum and Recommendation found that Defendant Indeck Power Equipment Company's source code was protected by a copyright because Indeck's "software copyright includes the software's source code." (Doc. No. 44 at 13). Thus, the source code was subject to Plaintiff Equistar Chemicals L.P.'s license to use if the source code satisfied the other criteria set forth in section 19(d) of the parties' Master Contract. (*Id.*). This Court adopted the Memorandum and Recommendation without addressing the copyright finding. (*See* Doc. No. 47).

Having heard testimony of the parties' witnesses, it is clear that Indeck does not have a copyright on the boiler software or its source code. Rather, the company treats the source code as a trade secret. Accordingly, the Court therefore amends its Order Adopting the Memorandum and Recommendation and specifically rejects the Magistrate Judge's finding that the source code was protected by a copyright. (*See* Doc. No. 44 at 13).

This difference, however, has no effect on the outcome of this case because the Master Contract provides that a technology is subject to section 19(d)'s license provision if it is, among

other things, protected by either a copyright *or* a trade secret right. As stated above, Indeck treats its source code as a trade secret. Thus, consistent with the Magistrate Judge's ruling, the source code is subject to Equistar's license if section 19(d)'s other criteria are satisfied. (*See id.*).

Therefore, the Court **AMENDS** its Order Adopting the Memorandum and Recommendation to the extend that order includes a finding that the source code is protected by a copyright. Nevertheless, the Court still **ADOPTS** the Memorandum and Recommendation on other grounds. Lastly, the Court **REAFFIRMS** its denial of Equistar's motion for summary judgment (Doc. No. 23) and Indeck's motion for summary judgment (Doc. No. 25) as recommended by the Magistrate Judge.

SIGNED at Houston, Texas this 17th day of August, 2020.



Andrew S. Hanen
United States District Judge